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by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This part may be cited as the "Check Cashing Act of 1997".

SECTION 2. As used in this act, unless the context requires otherwise:

(1) "Applicant" means a person filing an application for a license under this Act;

(2) "Check" means any payment instrument;

(3) "Check Casher" means a person who, for compensation, provides currency in exchange for payment instrument received;

(4) "Control" means ownership of, or the power to vote, twenty-five percent (25%) or more of the outstanding voting securities of a licensee controlled by any person. There shall be aggregated with the person's interest the interest of any other person controlled by such person or by any spouse, parent, or child of such person;

(5) "Commissioner" means the commissioner of financial institutions;

(6) "Consideration" means and includes any premium charged for the sale of goods, or services provided in connection with the sale of the goods, which is in excess of the cash price of such goods or services;

(7) "Currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country;

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(8) "Department" means the Tennessee Department of Financial Institutions;

(9) "Licensee" means a check cashing business licensed by the commissioner to engage in such business in accordance with this act;

(10) "Material Litigation" means any litigation that, according to generally accepted accounting principles, is deemed significant to a person's financial health and would be required to be referenced in annual audited financial statements, reports to shareholders or similar documents;

(11) "Payment instrument" means a check, draft, warrant, money order, traveler's check or other instrument for payment of money, whether or not negotiable. Payment instrument does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit;

(12) "Person" means any individual, partnership, association, trust, corporation, limited liability company, or other group, however organized, but does not include the governments of the United States or this state or any department, agency, or instrumentality thereof;

SECTION 3. This act does not apply to:

(1) Any bank, trust company, credit union, building and loan association, savings bank or mutual bank organized under the laws of any state or the United States;

(2) Money transmitters licensed in the state of Tennessee. Provided, however, money transmitter agents are not exempt from the provisions of this act;

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(3) Industrial loan and thrift companies holding a certificate of registration in Tennessee;

(4) Persons who offer a check cashing service without receiving, directly or indirectly, any consideration or fee; and

(5) Persons engaged in the cashing of payment instruments which is incidental to the retail sale of goods or services whose compensation for cashing payment instruments at each site does not exceed five percent (5%) of the gross receipts from the retail sale of goods or services by such person during its most recently completed fiscal year. Provided, however, such persons may not make single payment loans on personal checks unless they are licensed and obtain a certificate of authority under this act.

SECTION 4.

No person shall engage in, or in any manner advertise engagement in, the business of cashing payment instruments without first obtaining a license under the provisions of this part. A separate license shall be required for each location from which such business is conducted.

SECTION 5.

(a) Each applicant for a license shall demonstrate, and each licensee shall maintain a minimum net worth of at least twenty-five thousand dollars (\$25,000) for each location.

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(b) Every corporate application, at the time of filing an application for a license under this part and at all times after a license is issued, shall be in good standing in the state of its incorporation. All applicants, whether corporate or noncorporate, at the time of filing an application for a license under this part and at all times after a license is issued, shall be qualified to do business in this state.

(c) Subject to the commissioner's discretion, no person shall be licensed under this act to do business in the state if such person has been adjudged guilty of any felony or if an executive officer, key shareholder or director of such person has been so adjudged. For purposes of this part, a person shall be deemed to have been convicted of a crime if such person has either pleaded guilty to, plead nolo contendere to, obtained a pre-trial diversion or been found guilty of a charge before a court or federal magistrate, or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof. The department may take into consideration the fact that such plea of guilty, or such decision, judgment, or verdict, has been set aside, reversed, or otherwise abrogated by lawful judicial process or that the person convicted of the crime received a pardon from the jurisdiction where the conviction was entered or received a certificate pursuant to any provision of law which removes the disability under this part because of such conviction.

(d) The department may deny an initial application for a license if the applicant is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction, until the conclusion of such criminal prosecution or enforcement action.

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(e) All applicants shall demonstrate such experience, character, and general fitness as to command the confidence of the public and warrant the belief that the business to be operated thereunder will be operated lawfully and fairly. This requirement is continuing in nature. In determining whether this qualification has been met, the commissioner may review:

(1) The business record and the capital adequacy of the applicant;

(2) The competence, experience, integrity, and financial ability of any person who is a director, officer, "supervisory employee" or five percent (5%) shareholder of the applicant or owns or controls the applicant; and

(3) Any record, on the part of the applicant or any person referenced in subsection (2) above of any criminal activity, any fraud or other act of personal dishonesty, any act, omission, or practice which constitutes a breach of a fiduciary duty or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

(f) The commissioner may deny a license pursuant to this act to any applicant whose license or registration was revoked in any jurisdiction during the twelve month period before the date of the application.

SECTION 6. Each application for a license under this act shall be made in writing under oath, and in a form prescribed by the commissioner.

SECTION 7.

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Each application for a license shall be accompanied by:

(1) An application fee of five hundred dollars (\$500) which is not subject to refund, but which, if the license is granted shall constitute all or part of the license fee for the first license year or part thereof;

(2) Financial statements for the immediately preceding fiscal year end prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm; and

(3) A nonrefundable investigation fee of one hundred dollars (\$100).

SECTION 8.

(a) Upon the filing of a properly completed application, accompanied by the nonrefundable application fee, the nonrefundable investigation fee and other required documents, the department shall investigate to ascertain whether the qualifications and requirements prescribed by this act have been met. If the department finds the applicant meets such qualifications and requirements, the department shall issue the applicant a license to engage in the check cashing business in this state. Any license issued under this part shall remain in effect through September 30 of each year following its date of issuance unless otherwise specified by the department or earlier surrendered, suspended, or revoked. If the commissioner finds that the qualifications and requirements prescribed by this part have not been met, the commissioner shall deny the application in writing setting forth the reasons for the denial.

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(b) The commissioner shall approve or deny every application for a license within ninety (90) days from the date a completed application with all required fees and documents is submitted, which period may be extended by the written consent of the commissioner. If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after its filing, the applicant may make written demand to the department for a hearing before the commissioner on the question of whether the license should be granted.

(c) Any hearing on the denial of a license shall be conducted pursuant to the Uniform Administrative Procedures Act. In any such hearing, the burden of proving that the applicant is entitled to a license is on the applicant. Decisions of the commissioner following any hearing on the denial of a license are subject to review under the Uniform Administrative Procedures Act.

(d) Licenses are not transferable or assignable.

(e) Every person engaged in activities within this state encompassed by this act at the time of the part's adoption shall file an application in accordance with the provisions of this part within ninety (90) days of its effective date. No person shall be deemed to be in violation of this act for operating without a license if such person files an application within such ninety (90) day period, unless and until such application is denied.

SECTION 9.

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(a) Each license may be renewed upon application by the licensee showing continued compliance with the qualifications for a license and the filing of a completed renewal form and payment of a nonrefundable renewal fee of five hundred dollars (\$500). The department shall send the renewal form to each licensee no later than August 1. The completed renewal form and payment of the renewal fee shall be sent to the department on or before September 1 of each year.

(b) The licensee shall include in its annual renewal report:

(1) a copy of its most recent unconsolidated annual financial statement (including balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes in financial position), except that a licensee may provide the most recent consolidated annual financial statement of the parent corporation if such statement includes the balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes of financial position of the licensee;

(2) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the commissioner on any other report required to be filed under this act;

(3) Notification of material litigation relating to the businesses regulated under this act;

(4) Such other information as the commissioner may deem appropriate for the proper enforcement of this act.

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(c) A licensee that has not filed a renewal report or paid its renewal fee by the renewal filing deadline and has not been granted an extension of time to do so by the commissioner shall be notified by the commissioner, in writing, that a hearing will be scheduled at which time the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements.

(d) Unless excused for good cause by the commissioner, each licensee who fails to remit the renewal fee and annual renewal application by September 1 of each year, shall forfeit to the commissioner a late fee of fifty dollars (\$50) per day until these requirements are met before the renewed license may be issued.

SECTION 10.

(a) No licensee shall change its address unless it has given fourteen (14) days prior notice to the commissioner.

(b) No licensee shall change its name unless it has given fourteen (14) days prior notice to the commissioner.

(c) A change in control of a licensee shall require prior written notice to the commissioner. In the case of a publicly traded corporation, such notice shall be made in writing within thirty (30) days of a proposed change or acquisition of control of a licensee. Upon such notification, the commissioner may require such information as deemed necessary to determine whether an application for a license is required. Control in the case of a corporation has the meaning used in section 2 of this act. Control in the case of any other entity means any change in the principals of the organization, whether

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active or passive. Costs incurred by the department in investigating a change in control request shall be paid by the person or persons requesting such approval. The commissioner may waive the filing of an application if, in the commissioner's discretion, the change of control does not pose any risk to the interests of the public.

(d) Whenever control of a licensee is acquired or exercised in violation of this section, the license shall be deemed revoked as of the date of the unlawful acquisition of control. Such licensee, or its controlling person, shall surrender the license to the commissioner on demand.

(e) If the commissioner approves of the change of name, location or ownership and an amended license must be issued, a fifty dollar (\$50.00) fee shall be paid for the amended license.

SECTION 11.

A licensee may operate the businesses regulated under this act at a location where any other business is operated or in association or conjunction with any other business as long as the licensee gives prior written notification to the commissioner and the other business is consistent with the following requirements:

(1) The books, accounts and records of businesses regulated under this act are kept and maintained separate and apart from the books, accounts, and records of any other business; and

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(2) The other business is not of a type which would tend to enable the concealment of acts engaged in to evade the requirements of this act. If the commissioner determines upon investigation that the other business is of the type which would conceal such acts, the commissioner shall order the licensee to cease the operation of the businesses regulated under this act at such location.

SECTION 12.

Within fifteen (15) days of the occurrence of any one (1) of the events listed below, a licensee shall file a written report with the commissioner describing such event and its expected impact on the activities of the licensee in the state:

- (1) The filing for bankruptcy or reorganization by the licensee;
- (2) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority;
- (3) The denial of the opportunity to engage in the check cashing business by any state or governmental authority;
- (4) Any felony indictment of the licensee or any of its officers, directors or principals;
- (5) Any felony conviction of the licensee or any of its officers, directors, or principals; and
- (6) Such other events as the commissioner may determine and identify by rule.

SECTION 13.

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(a) The commissioner may conduct periodic examinations of a licensee to determine compliance with the provisions of this act. In conducting the examination, the commissioner or the commissioner's staff shall have full and free access to all the books, papers and records of the licensee and may summon and qualify as witnesses, under oath, and examine the directors, officers, members, agents and employees of any licensee, and any other person concerning the condition and affairs of the licensee. The department may charge and collect an examination fee of two hundred dollars (\$200) per day per examiner for any compliance examination conducted by the department, which fee in the aggregate shall not exceed one thousand two hundred dollars (\$1,200) per licensed location per year.

(b) Upon reasonable cause, the commissioner may conduct an examination of any unlicensed person to determine whether violations of this act have occurred or are occurring. In conducting such examination, the commissioner has the ability to summon witnesses and examine them under oath concerning matters relating to the business of such persons or such other matters as may be relevant to the discovery of a violation of this act, including without limitation, the conduct of business without a license as required under this act.

(c) The commissioner may promulgate reasonable regulations in accordance with the Uniform Administrative Procedures Act for the enforcement of this act. A copy of any rule or regulation adopted by the commissioner shall be mailed to each license holder at least thirty (30) days before the date it takes effect.

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SECTION 14.

(a) Each licensee shall make, keep and preserve the books, accounts, records, and documents as the commissioner may determine by rule.

(b) All records of the check cashing business shall be maintained separately by the licensee from any other business in which the licensee may engage.

SECTION 15.

(a) After notice and an opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying such application;

(2) The licensee violates any provision of this act or any rule or order validly promulgated or issued by the commissioner;

(3) The licensee refuses to permit the commissioner to make any examination authorized by this part;

(4) The licensee willfully fails to make any report or pay any fee required by this part;

(5) The licensee has been found guilty of or liable for any fraudulent act or practice;

(6) The licensee has made any material false representation to the commissioner in any application or report filed with the commissioner; or

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(7) The licensee has abandoned its place of business for a period of sixty
(60) days or more.

(b) The commissioner may only revoke or suspend the particular license with
respect to which grounds for revocation or suspension may occur or exist unless the
commissioner finds that the grounds for revocation or suspension are of general
application to all offices or to more than one (1) office operated by the licensee, in which
case the commissioner may revoke or suspend all of the licenses issued to the licensee.

SECTION 16. The provisions of the Uniform Administrative Procedures Act, compiled in
title 4, chapter 5, apply to any hearing afforded pursuant to this part.

SECTION 17.

If, after notice and an opportunity for a hearing, the commissioner finds that a
person has violated this act or a rule adopted under this act, the commissioner may, in
addition to all other powers conferred in this part:

(1) Order the person to cease and desist violating the act or its rules and
require the refund of any fees collected by such person in violation of this act;
and

(2) Order the person to pay to the commissioner a civil penalty in an
amount specified by the commissioner, not to exceed one thousand dollars
(\$1,000) for each violation or, in the case of a continuing violation, one thousand
dollars (\$1,000) for each day that the violation continues.

SECTION 18.

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(a) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this act. A consent order shall be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this part, or any rule, regulation or order promulgated or issued thereunder has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this act or any rule, regulation or order promulgated or issued thereunder.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this act without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken which is filed with the commissioner within twenty (20) days of the receipt of the notice of the commissioner's emergency action.

SECTION 19.

(a) Any person who knowingly and willfully violates any provision of this act or any order or rule pursuant thereto for which a penalty is not specifically provided commits a Class C misdemeanor. Each day such violation occurs is a separate offense.

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(b) Any person who knowingly and willfully makes a material, false statement in any document filed or required to be filed under this act with the intent to deceive the recipient of the document commits a Class E felony.

(c) Any person who knowingly and willfully fails to file a document required to be filed under this act commits a Class E felony.

(d) Any person who carries on an unauthorized check cashing business commits a Class E felony.

(e) Any person who obstructs or endeavors to obstruct a lawful examination of a licensee commits a Class E felony.

(f) It is the duty of the commissioner to submit to the appropriate district attorney general for the respective counties of the state any criminal violation of this act known by the commissioner to have occurred in such county. The commissioner shall also report any such violation to the appropriate division of the Tennessee bureau of investigation. The commissioner may provide such information to the attorney general and reporter and/or the appropriate federal authorities as the commissioner deems proper. Confidential information which is communicated by the commissioner pursuant to this section remains confidential in the hands of the agency to which such information is reported, and does not become a matter of public record by virtue of this communication.

(7) In addition to the criminal penalty provided for in this section, the commissioner may also commence an action to enjoin the operation of the business through a cease and desist order.

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SECTION 20.

(a) Any person aggrieved by the conduct of a licensee under this act in connection with the regulated activities, may file a written complaint with the commissioner who may investigate the complaint.

(b) In the course of the investigation of the complaint, the commissioner may:

- (1) Subpoena witnesses;
- (2) Administer oaths;
- (3) Examine any individual under oath; and
- (4) Compel the production of records, books, papers, contracts, or other documents relevant to such investigation.

(c) If any person fails to comply with a subpoena of the commissioner under this act or to testify concerning any matter about which the person may be interrogated under this act, the commissioner may petition any court of competent jurisdiction for enforcement.

(d) The license of any licensee under this act who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.

(e) The commissioner shall have the administrative power to investigate and enforce any and all complaints filed by any person which are not criminal in nature, which complaint relates to check cashing businesses, including licensees hereunder and those who are exempt under Section 3.

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SECTION 21.

(a) Before a licensee shall deposit, with any financial institution, a payment instrument that is cashed by a licensee, each such item must be endorsed with the actual name under which such licensee is doing business. Additionally, the words "Licensed Check Cashing Business" must be written legibly or stamped immediately after or below the name of the endorser.

(b) Licensees shall comply with all applicable federal statutes governing currency transaction reporting.

(c) Every licensee shall display its license and post a notice containing its charges for services regulated under this act.

(d) Licensees may not alter or delete the date on any check cashed.

(e) Licensees shall issue a receipt for each check cashing transaction upon request. The receipt shall include, among other matters the licensee may desire to include, the amount of the check and the total fee charged.

(f) The maximum fee a licensee may charge for a bad check is twenty dollars (\$20).

(g) No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, any statement or representation that is false, misleading, or deceptive, or that omits material information.

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(h) Within ten (10) business days after being advised by the payor financial institution that a payment instrument has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee shall notify the police department in the city or town where the office of the licensee where the check was cashed is located. If a payment instrument is returned to the licensee by the payor financial institution for any of the aforementioned reasons, the licensee may not release the payment instrument without the consent of the city or town police department, or other investigative law enforcement authority.

(i) No licensee shall issue coupons, gift certificates or tokens to be used in lieu of money when cashing a check.

(j) No licensee shall require the customer to receive payment by a method which causes the customer to pay additional or further fees and charges to the licensee or other person.

(k) No licensee shall conduct a business regulated under this act at a location other than the licensed location.

(l) No licensee shall receive any other charges or fees in addition to the fees listed in this act.

(m) Licensees shall pay to every customer tendering a payment instrument to be cashed, the entire face amount of such instrument in cash less any charges permitted by law, on the same date upon which such instrument is presented.

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(n) Licensees shall not require that a customer cash two (2) separate checks in a manner to avoid the limitations on the fees a licensee can charge.

(o) No check casher shall:

(1) Charge check cashing fees, except as otherwise provided in this act, in excess of five percent (5%) of the face amount of the payment instrument or \$5.00, whichever is greater;

(2) Charge check cashing fees in excess of three percent (3%) of the face amount of the payment instrument, or \$2.00, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of such payment instrument;
or

(3) Charge check cashing fees for personal checks or money orders in excess of ten percent (10%) of the face amount of the personal check or money order or \$5.00, whichever is greater.

(p) No licensee shall agree to hold a payment instrument for later deposit.

(q) Licensees may charge a customer with a one time membership fee not to exceed ten dollars (\$10.00).

SECTION 22. This act shall take effect July 1, 1997, the public welfare requiring it.

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